

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BEECHWOOD RESTORATIVE CARE
CENTER, BROOK CHAMBERY, and
OLIVE CHAMBERY,

Plaintiffs,

-vs-

LAURA E. LEEDS, EDMUND RUSSELL
ALTONE, ROBERT W. BARNETT,
ANNA D. COLELLO, ARLENE L. GRAY,
HENRY M. GREENBERG, ANTONIO C.
NOVELLO, STEVEN B. STEINHARDT,
DENNIS P. WHALEN, SANFORD RUBIN,
SUSAN T. BAKER, SHARON A. CARLO,
CYNTHIA T. FRANCIS, NAOMI B. HAUSER,
JOSEPH P. MOORE, MARY ELIZABETH
RICH, and BARBARA W. SANER,

Defendants.

**DEFENDANTS' PROPOSED
JURY CHARGES**

02-CV-6235

Defendants respectfully supplement their previous proposed jury charges (Docket No. 295) and submit two additional proposed jury charges. The first proposed jury charge regarding Administrative Law was previously submitted in open court. The second proposed jury charge relates to Administrative Law Judge Marc P. Zylberberg's administration of the June 1999 hearing and subsequent Report and Recommendation.

Defendants object to plaintiffs arguing against the ALJ decision. The decision is binding and cannot be impeached under New York and Federal Law. If the Court allows plaintiffs to make such an argument at closing, defendants request that Defendants' Proposed Charge No. 9 be given to supplement the administrative law and collateral estoppel charges.

Defendants' Proposed Charge No. 8

Administrative Law

Administrative law is a branch of law governing the creation and operation of administrative agencies. Of special importance are the powers granted to administrative agencies, the substantive rules that such agencies make, and the legal relationships between such agencies, other government bodies, and the public at large.

Administrative law encompasses laws and legal principles governing the administration and regulation of government agencies (both Federal and state). Such agencies are delegated power by Congress (or in the case of a state agency, the state legislature) to act as agents for the executive. Generally, administrative agencies are created to protect a public interest rather than to vindicate private rights.

An Administrative Law Judge is an independent hearing examiner who presides at an administrative hearing. An ALJ has the power to administer oaths, receive evidence, take testimony, and make initial findings of fact or law. An ALJ's findings are subject to review and modification by agency heads.

Source: www.law.cornell.edu.

Defendants' Proposed Charge No. 9

Presumption Regarding Official Government Acts

Government officials are presumed to act conscientiously and in good faith in the discharge of their duties. Here, Administrative Law Judge Zylberberg is presumed to have acted in good faith in administering the June 1999 hearing and in issuing his Report and Recommendations. To overcome this presumption, plaintiffs must irrefragably prove, by clear and strong evidence, specific acts of bad faith on the part of Judge Zylberberg that establish some specific intent to injure the plaintiffs.

Source: Chambery v. United States, 54 Fed. Cl. 2, 7-8 (Ct. Cl. 2002).

Dated: June 18, 2012

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CERTIFICATE OF SERVICE

I certify that on June 18, 2012, I electronically filed the foregoing Defendants' Proposed Jury Charges with the Clerk of the District Court using CM/ECF system, which sent notification of such filing to the following:

1. Kevin S. Cooman, Esq.
25 East Main Street, Suite 500
Rochester, New York 14614
2. David Rothenberg, Esq.
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And, I hereby certify that I have mailed, by the United States Postal Service, the document to the following non-CM/ECF participant(s):

1. N/A

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